

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs, July 2, 2009

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES, v.
M.J.V., and O.V., IN THE MATTER OF: S.M.V., dob 12/20/2004**

**Direct Appeal from the Juvenile Court for Sullivan County
No. J13855 Hon. William A. Watson, Judge**

No. E2009-00414-COA-R3-PT - FILED AUGUST 18, 2009

In this Petition to Terminate the parental rights of both parents to the minor child, the petitioner alleged several statutory grounds to terminate the parental rights of the parents. Prior to trial the mother surrendered her parental rights and the issues at trial were whether the father's parental rights should be terminated. Following an evidentiary hearing, the Trial Court held there were several statutory grounds to terminate the father's parental rights and that it was in the best interest of the child that the father's rights be terminated. The father has appealed and on appeal we affirm the Judgment of the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Juvenile Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

L. Carter Massengill, Bristol, Tennessee, for appellant, O.V.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Amy T. McConnell, Assistant Attorney General, Nashville, Tennessee, for appellee, Tennessee Department of Children's Services.

OPINION

The Department of Children's Services filed a Petition to Terminate Parental Rights as to both parents, M. and O.V., regarding their minor child S.M.V., d.o.b. 12/20/2004. The Petition

alleged the child was adjudicated dependent and neglected on January 29, 2007, after being placed in temporary state custody on October 10, 2006. The Petition stated that the child had been in foster care continuously since that time, and that respondents had failed to provide a suitable home despite the state's efforts at assistance for the past 16 months, had failed to substantially comply with their permanency plan, and that the conditions leading to removal still persisted. Further allegations were made that both respondents were mentally incompetent and could not provide for the child's needs, and that it was in the best interests of the child for the parents' rights to be terminated.

Prior to the trial of this case, the mother had surrendered her parental rights, and the time for revocation had passed, and she is not a party to this appeal.

Following the evidentiary hearing, the Trial Court ruled that the child was adjudicated dependent and neglected on January 29, 2007, and that he had been in foster care continuously since that time. The court said that DCS had made reasonable efforts to assist the parents in regaining custody, including intensive in-home services, training in homemaking and parenting skills, therapeutic and supervised visitation, parenting classes and assessments, etc.

The Court found the father had a limited education and was impaired mentally, and that according to an expert witnesses, he was unable to recognize or provide for the physical, nutritional and safety needs of the child, and that he had failed to maintain appropriate housing for the child. Further, the Court found that the conditions that existed in the home at the time of removal still persisted, and that the father was unable to recognize or provide for the nutritional and safety needs of the child.

The Court found that the father refused to take his prescribed medication, and his untreated mental condition was detrimental to the child, and that the State had shown by clear and convincing evidence that the father had abandoned the child by failing to provide a suitable home, despite extensive efforts by DCS. The Court found the father was still unable to demonstrate understanding of the child's nutritional, physical and safety needs, and that termination of the father's parental rights was proper pursuant to Tenn. Code Ann. §36-1-113(g)(1) as defined in Tenn. Code Ann. §36-1-102(1)(A)(ii).

The Court also found the State had shown by clear and convincing evidence that the father had failed to substantially comply with his permanency plan. Thus, the Court found that the father's rights should be terminated based on the statutory ground set forth in Tenn. Code Ann. §36-1-113(g)(2) and Tenn. Code Ann. §37-2-403(a)(2). The Court found that the State had also proven another ground, i.e., persistent conditions, pursuant to Tenn. Code Ann. §36-1-113(g)(3).

The issues presented on appeal are:

1. Whether clear and convincing evidence supports the Trial Court's decision to terminate the father's parental rights on any of several statutory grounds?

2. Whether clear and convincing evidence supports the Trial Court's determination that termination of the father's parental rights was in the child's best interest?

As we explained in *State Dept. of Children's Services v. V.N.*, 279 S.W.3d 306, 316-317 (Tenn. Ct. App. 2008):

Our Supreme Court reiterated the standard of review for cases involving termination of parental rights stating:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

In Department of Children's Services v. D.G.S.L., this Court discussed the relevant burden of proof in cases involving termination of parental rights stating:

It is well established that "parents have a fundamental right to the care, custody, and control of their children." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)). "However, this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute." *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not terminated. *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct.

App.1998). Similarly, before the court may inquire as to whether termination of parental rights is in the best interests of the child, the court must first determine that the grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c).

Dep't of Children's Servs. v. D.G.S.L., No. E2001-00742-COA-R3-JV, 2001 Tenn. App. LEXIS 941, at **16-17, 2001 WL 1660838, at *6 (Tenn. Ct. App. Dec.28, 2001), no appl. perm. appeal filed. Clear and convincing evidence supporting any single ground will justify a termination order. *E.g., In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Clear and convincing evidence supports the Court's determination that the father had abandoned the child by failing to establish a suitable home, and that he was in substantial noncompliance with the permanency plans, and that the conditions leading to removal still persisted.

The evidence demonstrated the father had been given intensive help from DCS and other agencies for two years, in the form of parenting instruction, instruction regarding financial/budgeting issues, instruction regarding food preparation, marital counseling, individual mental health services, etc. Yet all of the DCS workers that testified stated that there had really been no improvement in the father's abilities nor in his living conditions. The DCS workers testified that the father's mobile home was dingy and dirty, and that he rarely had adequate food in the home, despite their efforts to take him grocery shopping or to local resources to obtain food, or to help him create and stick to a budget, or to help him with meal preparation. Also, the father still had his father living in the home, even though the Court had forbidden defendant's father from being around the child due to allegations of sexual abuse of the child's mother, and the father refused to continue with individual counseling or to take his prescribed medications for his diagnosed mental illnesses.

Although clear and convincing evidence supporting any single ground will justify a termination order, the Court properly found that the other grounds of substantial noncompliance and abandonment had been established by clear and convincing evidence.

The father also argues that the Trial Court erred in finding that termination was in the child's best interests. To make this finding, the Court must consider the following factors:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact

with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

In this case, the father had not made any adjustment of his circumstances such that it would be safe for the child to be in his home, and had clearly failed to effect any lasting change despite DCS support and services. It was shown that the father did not interact properly with the child and would only play with him when prompted to do so. The child was thriving in his foster home, and the testimony showed that he was very bonded to his foster parents, and that a change of caretakers would likely be very detrimental to this young child.

The evidence also showed that the father's home was unsafe for a child, since the father repeatedly left guns, tools, and medications where a child could reach them. Moreover, the home was dirty and the father did not provide adequate or appropriate food for the child. Taking all of the factors set forth in the record into consideration, the Trial Court was correct in finding that it was in the child's best interests to terminate the father's parental rights.

We affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to O.V.

HERSCHEL PICKENS FRANKS, P.J.